

**DEPARTMENT OF STATE REVENUE**

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**LETTER OF FINDINGS NUMBER 92-0325 WTH AND 92-0326 WTH**

**Withholding Tax  
For Tax Year 1988**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**1. Withholding Tax – Withholding on nonresident partners**

**Authority:**

The taxpayer protested the assessment of adjusted gross income tax withholding on nonresident partners.

**STATEMENT OF FACTS**

The taxpayer is a partnership that owned rental real estate in Indiana. The partnership purchased the rental real estate in 1980 and lost it to foreclosure in 1988. Nonresident partners filed Indiana tax returns. All of the income and losses attributable to the partnership were Indiana income or losses. The losses exceeded the gain.

**DISCUSSION**

**1. Withholding Tax – Withholding on nonresident partners**

The taxpayer protested the assessment of withholding tax. The taxpayer has alleged that all of the partners of the partnership filed Indiana returns, that no tax was due, because the losses incurred by the taxpayer exceeded the gain from the 1988 foreclosure, and that no tax was due, because no funds were received.

Under IC 6- 3-4-12, every partnership shall withhold from nonresident partners on account of their distributive share of partnership income at the time that the partnership pays or credits amounts to any of its nonresident partners.

The taxpayer provided the department with adequate evidence that the partners would have sufficient losses to offset the taxable portion of the IRC Section 1231 gain.

**FINDINGS**

The taxpayer's protest is sustained.